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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,674	02/22/2002	Fermin Ruiz	PGI6044P0830US	2114
32116	7590	06/21/2004	EXAMINER	
WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661			GELLNER, JEFFREY L	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/081,674	RUIZ ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jeffrey L. Gellner	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 March 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,6-9,12-16,18,23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,6-9,12-16,18,23 and 24 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                     | Paper No(s)/Mail Date. _____ .  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

### ***Claim Objections***

Claim 1 is objected to because of the following informality:

In claim 1, line 6, “ $100^2\text{gr/m}^2$ ” should probably be -- $100 \text{ gr/ m}^2$ --. The meaning of the superscripted “2” after the 100 is unclear.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7-9, 12-15, and 24 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7-9, 12-15, and 24 are indefinite because they depend upon claim 1 which uses as its transitional phrase “consisting of” and, therefore, cannot add elements. The rule is that a “claim which depends from a claim which “consists of” the recited elements or steps cannot add an element or step” (MPEP 2111.03). Claims 7-9, 12-15, and 24 are deemed to add an element or step.

In Claim 24, line 2, “said tube-forming step” lacks antecedent basis.

***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6-9, 12, 14-16, 24 is rejected under 35 U.S.C. §103(a) as being unpatentable over Matsunaga (JP 11-229260) in view of Appel et al. (US 4,340,563) in further view of Harada et al. (JP402117322A).

As to Claims 1 and 16, Matsunaga disclose a protective cover (see abstract in English) for protection of agricultural products consisting of a nonwoven fabric (abstract in English) formed from thermoplastic polymeric filamentary elements (abstract in English), the nonwoven fabric having a basis weight from 10 to 100 g/m sq. (see patent at page 3 para. [0011] where “50~300 g/m<sup>2</sup>” is disclosed). Not disclosed is the fabric being spunbond and having a portion with printing that occludes light transmission. Appel et al., however, discloses that it is well known it make spunbond thermoplastic material (col. 1 lines 39-43) and Harada et al. discloses printing on a portion of the cover (“applying paint” of abstract in English). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Matsunaga to make spunbond as disclosed by Appel et al. as an economical method of making the cover material and to add printing to a portion as disclosed by Harada et al. so as to have a marker to detect temperature change when using the cover.

As to Claim 6, Matsunaga as modified by Appel et al. and Harada et al. further disclose a piece of fabric with an edge (Matsunaga).

As to Claims 7 and 8, Matsunaga as modified by Appel et al. and Harada et al. further disclose a means for affixing in that covers are well known to have affixing means on there edges.

As to Claim 9, Matsunaga as modified by Appel et al. and Harada et al. further disclose a seam in that covers are well know to have seams.

As to Claim 12, Matsunaga as modified by Appel et al. and Harada et al. further disclose adding an insecticide, fungicide algaeicide, or UV protectant to the cover in that covers are well known to have these compositions added.

As to Claims 14 and 15, Matsunaga as modified by Appel et al. and Harada et al. further disclose the additive being a fiber treatment or a topical treatment in that these characteristics are well known of additives.

As to Claim 24, Matsunaga as modified by Appel et al. and Harada et al. further disclose joining edges by heat, adhesive, or bonding in that these are well known methods of joining edges in fabric covers.

As to Claim 18, Matsunaga disclose a protective cover (see abstract in English) for protection of agricultural products comprising a nonwoven fabric (abstract in English) formed from thermoplastic polymeric filamentary elements (abstract in English). Not disclosed is the fabric being spunbond and having a portion with printing that occludes light transmission. Appel et al., however, discloses that it is well known it make spunbond thermoplastic material (col. 1 lines 39-43) and Harada et al. discloses printing on a portion of the cover (“applying paint” of abstract in English). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover

of Matsunaga to make spunbond as disclosed by Appel et al. as an economical method of making the cover material and to add printing to a portion as disclosed by Harada et al. so as to have a marker to detect temperature change when using the cover. The cover of Matsunaga as modified by Appel et al. and Harada et al. inherently disclose the method steps recited in claim 18.

Claim 23 is rejected under 35 U.S.C. §103(a) as being unpatentable over Matsunaga (JP 11-229260) in view of Appel et al. (US 4,340,563) in further view of Harada et al. (JP402117322A) And Vanier (US 6,061,954).

As to Claim 23, Matsunaga disclose a protective cover (see abstract in English) for protection of agricultural products comprising a nonwoven fabric (abstract in English) formed from thermoplastic polymeric filamentary elements (abstract in English). Not disclosed is the fabric being spunbond and formed into a tube and having a portion with printing that occludes light transmission. Appel et al., however, discloses that it is well known it make spunbond thermoplastic material (col. 1 lines 39-43) and Harada et al. discloses printing on a portion of the cover (“applying paint” of abstract in English) and Vanier discloses a tube (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cover of Matsunaga to make spunbond as disclosed by Appel et al. as an economical method of making the cover material and to add printing to a portion as disclosed by Harada et al. so as to have a marker to detect temperature change when using the cover and making into a tube as disclosed by Vanier so as to cover bananas. The cover of Matsunaga as modified by Appel et al. and Harada et al. and Vanier inherently disclose the method steps recited in claim 23.

***Response to Arguments***

Applicant's arguments with respect to claims 1, 6-9, 12-16, 18, 23, and 24 have been considered but are moot in view of the new ground(s) of rejection.

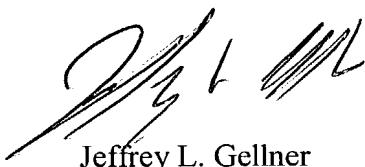
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JP11-137097 disclose in the prior art printing on a protective cover. Examiner is obtaining translations in English of the Matsunaga, Harada et al., and JP11-137097 references.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner